Hiney Printing Company *and* Graphic Arts Union Local No. 246

Graphic Arts Union Local No. 246 *and* Hiney Printing Company. Cases 8-CA-13856, 8-CA-14432, and 8-CB-4404

June 11, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 11, 1981, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent Employer filed exceptions and supporting briefs, and Respondent Union filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that Respondent Employer violated Section 8(a)(5) of the Act by refusing to furnish certain relevant information to the Union, by refusing to pay contractual cost-of-living adjustments, and by conducting a campaign among its employees designed to bring pressure on the Union to accede to the Employer's demands. We adopt these findings with the following additional reasons for finding the Employer's campaign among the employees to be unlawful.

Here, the Employer did more than urge employees to prevail upon the Union to accept the Employer's bargaining demands. Thus, at the same time the Employer refused to provide the Union with information necessary to evaluate its demands for reduction of wage rates and other contract modifications, it told the employees that the Union had not responded to its requests, but failed to inform them that the Union had requested the information. In addition, the employees were asked to contact the union representatives and signify their approval of the Employer's demands, on which, the Employer suggested, the employees' job security depended. Further, the Employer announced to the employees, without first informing the Union, that it was withholding unilaterally their contractual cost-of-living increases pending the Union's agreement to the reduced wage rates. In these circumstances, the Employer's conduct amounted to an effort to bypass the Union. The Employer's campaign among the employees, therefore, violated Section 8(a)(5). *Safeway Trails, Inc.*, 233 NLRB 1078 (1977); *Goodyear Aerospace Corporation*, 204 NLRB 831 (1973), modified on other grounds 497 F.2d 747 (6th Cir. 1974). We shall modify the Administrative Law Judge's recommended Order to reflect that the nature of this violation is the Employer's attempt to bypass the Union.

With respect to Respondent Union's refusal to execute the mid-contract modification agreement, we agree with the Administrative Law Judge that there is a failure of proof that the requisite approval of the modification by the International president of the Graphic Arts International Union had been obtained, and that Respondent Union, therefore, did not violate Section 8(b)(3) of the Act, as alleged.

The General Counsel and the Employer (the Charging Party in Case 8-CB-4404) concede that, pursuant to longstanding practice, all collective-bargaining agreements made by Respondent Union required approval by the International president.[1] The very agreement the Employer here sought to modify was, by its terms, subject to the approval of the International president, and was signed by him. There is no claim that this requirement was inapplicable to modifications of the agreement.[2] The General Counsel and the Employer contend, however, that such approval was given in the course of a telephone call Respondent Union's president, Bockman, made to International President Brown.[3]

The credited evidence regarding the telephone conversation, however, falls far short of showing such approval. Bockman was asked whether he had indicated to Brown the terms of the proposed modification and testified, "I don't know exactly what they were at that time." Bockman, who provided the only direct testimony as to the conversation, testified further that he told Brown about the Employer's request to negotiate a modification and

[1] This requirement is part of the constitution and bylaws of the International Union, by which Respondent Union is bound.

[2] Strict adherence to all safeguards designed to insure full consideration of the consequences of a mid-contract modification is especially important where, as here, the proposed modification would have involved the Union's consent to substantial reductions in contractual wage rates over which it was not legally obligated to bargain.

[3] The record is obscure as to the date of this call. Bockman testified that he made the call prior to February 4, 1981, the date on which the proposed modification was ratified. The Administrative Law Judge, crediting the substance of Bockman's testimony to the effect that the call was made before he knew the final terms of the modification, nevertheless referred to the call as Bockman's "reported telephone conversation of February 4, 1981." Because the February 4 date for the call is inconsistent with the record as construed in light of the Administrative Law Judge's other factual findings, we attach no significance to his reference to the "reported telephone conversation" insofar as it purports to date the call.

its refusal to open its books to the Union's accountant. Brown told Bockman to "do what you can do," but to "let the members handle it, don't go in there and influence them one way or the other," and to keep in touch and call Brown back "if I [Bockman] do anything pro or con, because this is very important."

Although this testimony is not very clearly focused, we cannot say that the Administrative Law Judge was incorrect in construing it as meaning that Bockman's conversation with Brown occurred before the final proposed modification was negotiated, and in viewing the conversation as "nothing more than Brown's reluctant approval for Bockman to negotiate a wage modification and submit it to a vote." The record contains nothing that compels a different conclusion. Thus, the president of the Employer testified that, before the tentative modification agreement was submitted to the employees for their vote, Bockman told him that he (at a time which was not specified) had called International President Brown, and that Brown had stated that Bockman "was to present it and whatever the men decided on, what [sic] would happen." Similarly, another witness who was present when Bockman reported the Brown conversation to the Employer's president testified that Bockman said Brown authorized him to "take that agreement and he could ratify the agreement . . . ." Later, this witness testified that, prior to the ratification meeting, Bockman said "that this would be an agreement that the contract will be made with the international president and the approval was granted."[4] These reports of Bockman's statements regarding his conversation with Brown, even if credited, simply are too sketchy and vague to warrant reversing the Administrative Law Judge's findings grounded in Bockman's testimony concerning the telephone call.[5] Neither are they sufficient to create apparent authority in Bockman to bind the International president.[6] In short, on the record considered as a whole, there is insufficient proof that the International president approved the modification expressly, or by implication, or by creating an impression that he had, and thus would estop him from denying his approval. Absent such approval, Respondent Union was not required to execute the modification agreement.[7]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Hiney Printing Company, Akron, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(c):

"(c) Attempting to bypass its employees' duly designated bargaining representative."

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint in Case 8-CB-4404 be, and it hereby is, dismissed in its entirety.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT attempt to bypass our employees' duly designated bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish Graphic Arts Union Local No. 246 the 21 separate items of financial data which it requested on or about April 22, 1980.

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[4] It is not clear to whom Bockman was supposed to have said this.

[5] We have reprinted the exact words of the witnesses wherever they appeared to be crucial. As the transcript of testimony was corrected pursuant to a motion by the General Counsel, we are reluctant to speculate that any further clarifying corrections should have been made.

While the reported statement that Bockman was authorized to "ratify" the agreement might be construed as a delegation of authority to *approve* the agreement, the word "ratify" is more consistent, in these circumstances, with the separate step of taking the agreement to the employees for their vote.

[6] "Apparent authority results when the principal does something or permits the agent to do something which reasonably leads another to believe that the agent had the authority he purported to have." *Retail Clerks Union Local 1364, Retail Clerks International Association, AFL-CIO, et al. (Food Employers Council, Inc.)*, 240 NLRB 1127, 1131-32 (1979), quoting *Hawaiian Paradise Park Corporation* v. *Friendly Broadcasting Co.*, 414 F.2d 750, 756 (9th Cir. 1969). See also *Hotel and Restaurant Employees and Bartenders Union, Local 2, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO (Zim's Restaurants, Inc.)*, 240 NLRB 757, 760, fn. 18 (1979).

With regard to Bockman's alleged statement that "approval was granted" (whatever that may be construed to mean), there is no evidence that such a representation was conveyed to the Employer.

[7] We find it unnecessary to pass on the Administrative Law Judge's alternative finding that Bockman lacked authority to conduct the ratification vote only among the employees of the Employer.

WE WILL comply with the terms and conditions of our current collective-bargaining agreement respecting cost-of-living adjustments and midterm wage increases.

WE WILL pay all of our lithographic employees any losses in wages which they have suffered because of our failure to pay them cost-of-living adjustments due on May 1, 1980, and November 1, 1980, and our failure to pay a 20-cent-an-hour wage increase due on November 1, 1980. Such payments will bear interest.

HINEY PRINTING COMPANY

DECISION

FINDINGS OF FACT

I STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: This case originally came on for hearing before me at Akron, Ohio, upon a consolidated unfair labor practice complaint,[1] issued by the Regional Director for Region 7, which alleges that Respondent Hiney Printing Company[2] violated Section 8(a)(1) and (5) of the Act. More particularly, the complaint in the CA cases alleges that Respondent Employer unlawfully refused to bargain with the Union by unilaterally refusing to pay benefits to its lithographic employees as required under the terms of an existing collective-bargaining agreement, refused to provide the Union with information necessary to permit it to bargain intelligently concerning the Employer's request for relief from certain provisions of its existing contract with the Union, and attempted to undermine the Union by dealing directly with bargaining unit employees. Respondent denies these allegations, except for the refusal to provide information, and contends that the information requested was not relevant to the Union's bargaining responsibilities.

Upon motions by the General Counsel and the Employer, on June 18, 1981, I ordered that Cases 8-CA-13856 and 8-CA-14432 be consolidated for decision with Case 8-CB-4404 and that the CB case be set down for hearing in Cleveland, Ohio, on July 14, 1981. The complaint which issued in the CB case[3] alleges that Respondent Union violated Section 8(b)(3) of the Act by refusing to execute a compromise settlement and revision of the collective-bargaining agreement which the parties assertedly concluded on February 4, 1981. The Union maintains that the revision in question was never properly ratified and that it is therefore under no obligation to execute said agreement. Upon these contentions, the issues herein were joined.[4]

I. THE UNFAIR LABOR PRACTICES ALLEGED

A. *The Alleged 8(a)(5) Violation*

Respondent Employer operates what its president and operating head, Kenneth Hiney, calls a commercial web sheet head printing plant. It has been in operation for just under 20 years. In the spring of 1980, when the events in this case began to take place, Hiney had about 50–60 employees in three organized bargaining units—lithographers, represented by the Union herein, and other employees represented by the Teamsters and the Bookbinders, respectively. At that time, Hiney employed about 27 lithographers on three shifts. At present writing, it employs about 15 or 16 lithographers on two shifts.

On November 1, 1979, Respondent Employer concluded a 2-year contract with the Union covering its lithographic employees. Hiney negotiated this contract with the Union simultaneously with several other printing firms in the Akron area. The contract in question also covered printing firms in Cleveland, where the Union has the bulk of its members. It called for cost-of-living adjustments (COLA) on May 1, 1980, and November 1, 1980, in the amount of 40 cents per hour for each increase of 1 percent in the cost-of-living index for the Cleveland metropolitan area.[5] It also called for a 20-cent-per-hour across-the-board increase on November 1, 1980.

On April 9, 1980, Hiney sought a meeting of union officials for the purpose of requesting relief from the economic provisions of the contract. A meeting for this purpose was held on April 9 in the office of Edward C. Kaminski, Hiney's lawyer, and was attended by various union representatives. At this time Hiney said that there was some possibility that the Company might have to close because its wage rates were not competitive with those paid in the Akron area. The union representatives asked Hiney for financial data which would support his statement, stating that they would give the data to an auditor for purposes of examination and analysis. On the following day, Respondent Employer furnished to the

[1] The principal docket entries in the CA cases are as follows: Charge filed herein by Graphic Arts Union Local 246 (herein called Union) in Case 8-CA-13,856 against the Respondent Employer on May 22, 1980; complaint issued herein by Regional Director for Region 8 on July 25, 1980; Employer's answer filed on August 7, 1980; charge filed herein by the Union against Employer in Case 8-CA-14,432, on December 5, 1980; consolidated complaint issued against Respondent Employer by Regional Director for Region 8, January 9, 1981; Respondent's answer to consolidated complaint Region 8, January 9, 1981; Respondent's answer to consolidated complaint filed on January 20, 1981; hearing held in Akron, Ohio, on February 12, 1981; briefs filed with me by the General Counsel, the Union, and Respondent on August 17, 1981.

[2] Respondents admit, and I find, that Hiney is an Ohio corporation which maintains its principal place of business in Akron, Ohio, where it is engaged in the printing business. During the course and conduct of its business, Hiney annually ships products valued in excess of $50,000 directly to points and places located outside the State of Ohio. Accordingly, it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

[3] The principal docket entries in the CB case are as follows:

Charge filed herein by the Employer on February 11, 1981; complaint issued against the Union by Regional Director for Region 8, on March 23, 1981; Respondent Union's answer filed March 25, 1981; hearing held in Cleveland, Ohio, on July 14, 1981.

[4] Certain errors in the transcript have been noted and are hereby corrected.

[5] The COLA increases worked out to 84 cents an hour for the scheduled May 1, 1980, adjustment and 60 cents an hour for the scheduled November 1 adjustment.

Union's attorney, Stanley D. Gottsegen, copies of its profit-and-loss statements for 1977, 1978, and 1979. Gottsegen made a written request for a quarterly profit-and-loss statement for the first quarter of 1980 and this information was forwarded to him in due course.

At the next meeting of the parties, which took place some time in mid-April, Hiney made a specific request for wage relief. He asked that the contract rate covering lithographers be reduced by approximately $2 an hour to a figure assertedly paid by other printing firms in the Akron area to lithographer employees represented by the International Printing Pressmen's Union (IPPU). Hiney also asked that a standard workweek be increased from 35 to 40 hours per week and that COLA adjustments be eliminated. On April 15, Gottsegen wrote to Kaminski, asking him to permit a full and complete examination of Hiney's books and records so that the Union, in considering Hiney's request, could fulfill the duty of representation which it owed to its members. He informed Kaminski that he was meeting with a representative of Arthur Young & Co., for the purpose of retaining their services in examining the information already in his possession.

After Gottsegen had met with a representative of the Arthur Young & Co., the audit principal, Michael Volchko, looked over the profit-and-loss statements which were furnished to him. After making an examination, Volchko prepared a list of 21 items or questions requiring additional information. The list was given to Gottsegen and forwarded to Respondent. The complete list of additional information requested by the Union is a matter of record. The requested data included corporate Federal income taxes for the years covered by the profit-and-loss statements, questions concerning the manner in which Hiney handled its inventory, a detailed listing of real and personal property, with an explanation of the method for depreciation used by Hiney's accountant for machinery and equipment, and the accounting method used to recognize sales and to record bad debts. Volchko also requested explanations as to why life insurance cash value had not increased from 1977, why there had been increases for rent, sales promotion, membership, dues, entertainment, subscriptions, repairs, and maintenance during the 3 years covered by the statements, why there had been a large drop in machinery depreciation in 1979, and other matters which would more fully explicate the entries found on the profit-and-loss statements. These items are data which are at issue in this case and which Respondent Employer has refused to produce.

In a letter dated May 5, 1980, from an attorney in Gottsegen's firm to Kaminski, the Union reiterated its insistence in obtaining the information sought by the Arthur Young & Company in order to consider Respondent's request for wage relief. Kaminski was also informed that the Union could not make any commitment at that time to grant any wage relief despite Hiney's plea for prompt action on his request. In this letter, Respondent was warned not to communicate directly with employees, as Respondent had indicated it might do, but to limit its negotiations to dealing with the Union. On May 6, Respondent announced that it was not going to inplement the contract provision for a May 1 cost-of-living adjustment. It made this announcement by sending special delivery letters to each of its lithographers which read as follows:

> As you know from you work schedules and the amount of work in the shop our business is very bad. We are not able to compete with other companies in the area for new business.
>
> The cost of living imcrease that went into effect May lst will further increase our cost of doing business and that fact, along with our non-competitive wage rates, indicated that business will not improve for Hiney Printing Company.
>
> In anticipation of the Union's agreement to a competitive wage rate, we are going to hold the C.O.L.A. increase due May 1, 1980, in abeyance and hope to merge it into a new competitive rate.
>
> We have met with representatives of your Union, GAIU #6[6] on April 9th (almost a month ago) to ask for contractual relief in order to be more competitive in our bids in an effort to secure more business and to continue your employment. That specific relief is a more competitive wage rate and a 40 hour week. To date the Union has not responded to our request.
>
> We anticipate that, unless the company secures the relief requested, a decision will have to be made soon as to whether or not we can continue in business.
>
> We urge you to contact your Union representative and to tell them you approve of our request for economic relief.

A copy of this letter was sent to George Bockman, the union president.

On May 11, Kaminski wrote to Gottsegen requesting a response to its request for contract relief. He asked Gottsegen to indicate if the Union was in fact not going to grant relief. He stated that, if such relief was not forthcoming, it would be necessary for Hiney to make plans to sell or otherwise dispose of the business. A reply from a member of Gottsegen's firm stated that the Union could not make any appropriate reply unless and until Respondent provided the information sought by the auditor. To protect its position under the grievance and arbitration provisions of the contract, the Union filed a grievance protesting the failure of the Company to grant the May 1, COLA, but it has not proceeded to arbitration in this matter.

The Respondent has continued to function, although it has reduced its operation from three shifts to two shifts and has reduced its lithographic unit, largely through attrition, to about 17 employees. From time to time, it authorizes overtime to its lithographers. On the afternoon of July 10, Hiney and his attorneys called a meeting of lithographers at the shop. No union representative other than the shop steward was present, although there is some evidence that Hiney notified the Union of the meeting on the morning of the day it was scheduled to take place. At this meeting, Kaminski told employees

[6] The Union's title was recently changed from Local 6 to Local 246.

that Hiney's business was bad, that the Company was losing money, and that it was doing so because the lithographer's wage rate was not competitive with the rates being paid in nonunion and IPPU printing shops. He stated further that relief from the contract provisions was still being negotiated but, if the Company did not get relief, the employees would in all probability lose their jobs because the Company would go out of business. He asked the employees to contact their union representatives and urge them to approve Respondent's request.

On November 1, a second cost-of-living adjustment fell due, as did a regular 20-cent-per-hour annual increase. Neither has been paid by Respondent. For this asserted breach of contract, the Union filed a second grievance to protect itself from a contractual defense of untimeliness but, as in the case of the grievance over the refusal to pay the May COLA, it has not proceeded to arbitration.

B. *The Alleged 8(b)(3) Violation*

After Hiney failed to secure Union and employee agreement to a modification of the contract by dealing directly with them, he enlisted the support of the Akron Labor-Management Committee. This Committee was established by the Mayor of Akron and exists for the purpose of preserving jobs and encouraging industry to stay in the Akron area. The Committee is headed by Nate Trachsel, who is an official of the Rubber Workers Union.

During the fall of 1980, a number of meetings were held between Trachsel, Hiney, Kaminski, and George Bockman, president of the Respondent Union, concerning Hiney's insistence on contractual relief. The scope of the meetings grew until they involved representatives of the five other commercial printing shops in Akron having contracts with the Graphic Arts Union and employee representatives from each of these shops. During these meetings, Hiney reiterated his request for a $2-an-hour reduction in the basic wage rate in his contract in order to meet the rate being paid by other shops to lithographers represented by the IPPU. Bockman flatly rejected these proposals. The record is uncontradicted that, at one of these meetings, Bockman said that a ratification vote on a proposed contract modification in any shop would be taken among the employees of that shop only since not all printing shops in the Akron area were seeking relief.

On February 2, 1981, Bockman, Kaminski, Hiney, and Trachsel met again at the premises of the Hiney Printing Company. They came to a tentative agreement among themselves on the two 1980 COLAs and the regular interim wage increase. This matter was at the heart of the dispute in the CA case, which was scheduled for hearing on February 12. This agreement provided for a lump sum payment to each employee of the May COLA through October 31, 1980, for a waiver of the November COLA and the November interim wage increase of 20 cents an hour, and for a continuation of the initial November 1979 rate for the balance of the contract term. On February 3, Trachsel and Bockman took this proposal to the employees of Respondent Employer, who met together on company premises at the change of shifts. The employees unanimously rejected the proposal.

On the following day, the same negotiators met again and came up with a subsequent proposal which contained some sweeteners. According to the second proposal, lump sum payments would be made to each employee in an amount representing the May COLA (84 cents per hour) for a period running from May 1 through December 31, 1980, and an additional amount representing the November COLA (60 cents per hour), for the period running from November 1 to December 31, 1980. The employees would waive the November 20-cent interim increase and would continue to work under the November 1979 rate until May 1981, at which time they would get a flat 20-cent increase for the balance of the contract term.

Trachsel and Bockman took the proposal to the Hiney employees who were meeting for the second consecutive day at the change of shift for the purpose of considering a contract modification proposal. On this occasion, they voted 11 to 7 to approve the proposal which was presented to them. After the vote, Trachsel and Bockman returned to Hiney's office and reported the vote. Bockman told Hiney that he thought they had a contract. Hiney said he would need 60 days to get the cash together to pay the lump sums required by the agreement because he had to sell some machinery. Bockman agreed to his request and Hiney added it to the paper containing the initial agreement. Hiney then suggested that the substance of the agreement be reported by each party to its respective attorneys so that they could formulate it into proper contract language.

On February 6, Bockman reported the results of the Hiney negotiations to the executive board of Respondent Union, which was holding its regular meeting in Cleveland. The minutes of the board meeting contain the following entry:

> In good conscience, the Board unanimously supports a motion not to concur with the action taken on February 4 at Hiney Printing because this action tends to undermine the wage structure of the local, and that this situation be referred back to our attorney for a legal solution.

On the following day, Bockman held another meeting with Hiney employees. He reported to them the action of the executive board. At this meeting, the Hiney employees reversed their earlier action and unanimously voted to reject the offer they had voted to accept on February 4. Eventually Hiney and his attorney learned of this action and responded by filing the instant unfair labor practice charge, alleging that Respondent Union had an obligation to execute in writing the terms of the February 4 settlement.[7] Hiney has not yet made any lump sum payments to employees called for by the agreement.

[7] Kaminski had already incorporated the terms of the agreement into a written document entitled "Supplemental Agreement" and had forwarded it to Bockman as an attachment to a letter dated February 5, 1981.

II. ANALYSIS AND CONCLUSIONS

A. *Respondent Employer's Refusal To Furnish Information*

The Supreme Court has enunciated a liberal discovery-type standard in determining the potential relevance of information which has been sought in aid of a bargaining agent's responsibility. *N.L.R.B.* v. *Acme Industrial Company*, 385 U.S. 432 (1967); see also *Brooklyn Union Gas Company*, 220 NLRB 189 (1975). It is well established that, where an employer objects to a union's bargaining demands on the basis that it is unable to afford the cost of the proposal, it is under a duty to let the union see its books and records so that the union can verify the truthfulness of the employer's contention. *N.L.R.B.* v. *Truitt Manufacturing Company*, 351 U.S. 149 (1956). Information must be produced by an employer if it is of probable or potential relevance in assisting a labor organization in performing its statutory duty. *General Electric Corporation*, 199 NLRB 286 (1972); *Goodyear Aerospace Corporation*, 204 NLRB 831 (1973).

With respect to financial records, the Board has held that an employer must provide a union actual data and information concerning the cash investments and other equities which support an existing pension plan. *Beyerl Chevrolet, Inc.*, 221 NLRB 710 (1975). If an employer relies upon quoted data to support a contention that it cannot afford to pay a union demand, it must permit the examination of the underlying records which support that data. *Stamco Division, Monarch Machine Tool Company*, 227 NLRB 1265 (1977). Such an examination can go as far as an audit of payroll books and records, including all books of original entry, payroll records, canceled checks, check stubs, and quarterly payroll returns. *Detroit Cabinet and Door Co.*, 247 NLRB 1415 (1980).

Normally, the duty to bargain over contract provisions imposed by Section 8(d) of the Act does not exist during a contract term, inasmuch as the contract is deemed to be the fulfillment of that duty during its operative period. However, there is a duty, at least on the part of an employer, to bargain during a contract term over a decision to close its plant and upon the effects of that decision upon its employees. *Production Molded Plastics*, 227 NLRB 776 (1977), enfd. 604 F.2d 451 (6th Cir. 1979). Where, as here, an employer has notified the union of the possibility that it might close and that it needed and desired contractual relief, the same considerations exist concerning full disclosure of financial data in the face of a plea of inability to pay. These considerations compel the same result as if the parties to this case were in the posture of negotiating an entirely new contract. See *Equitable Life Insurance Company*, 133 NLRB 1675 (1961); *Goodyear Aerospace Corporation, supra; Hoerner-Waldorf Paper Products Co.*, 163 NLRB 772 (1967).

Respondent's defense to the union's demand for specific in-depth information about its financial practices is based on the fact that it was still solvent and was not in fact "pleading poverty," to use its term. If telling the Union and all of the members of the bargaining unit that it could not afford the terms and conditions of its current contract is not "pleading poverty," I am at a loss to know what the term means. Inability to pay a union demand need not be expressed in any set formula before the obligations set forth in *Truitt* comes into play. An employee need not use the magic words "can't afford." *Monarch Machine Tool Company, supra*. The statement "if we give any more, I don't see how we can remain competitive" gives rise to an obligation of financial disclosure to back up that contention. *Stanley Building Specialties Company*, 166 NLRB 984 (1967). Such statements as "we can't reach your numbers," "your numbers are too high for us,"[8] and "we can't afford your total package"[9] trigger a disclosure obligation.

In this case, Hiney repeatedly told union representatives and its own employees that the COLA and wage scale provisions in the existing contract made it uncompetitive with other area printing firms who paid lower rates. This is the equivalent of a plea of inability to pay. As now Chief Justice Burger wrote in a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit:

> The Company asserts that a claim of inability to pay is not shown when the Company merely claims that the increases will prevent it from competing. But the inability to compete is merely the explanation of why the Company could not afford an economic benefit. [*United Steelworkers of America* [*Stanley Artex Windows*] v. *N.L.R.B.*, 401 F.2d 434 (1968).]

With respect to the relevance of the information sought to Respondent Employer's duty of financial disclosure, it should be borne in mind that the data withheld is merely explanatory of the data which was voluntarily furnished. The information requested did not stem from a union desire to engage in a fishing expedition into Hiney's books but were precise questions posed by a certified public accountant and audit principal of a nationally recognized accounting firm, who testified that such information was essential in order to make the data which had already been supplied meaningful. In November 1979, Respondent had entered into a collective-bargaining agreement which 6 months later it said it could not afford. The Union was understandably skeptical and wanted to know what had changed in this interim period to bring about the Hiney's sudden inability to pay. There is no reason to believe that the wage rates paid by its competitors suddenly dropped, thereby making the contract provisions uncompetitive. A precipitous change in Hiney's financial condition as of April 1980 necessarily requires a comparison of its current status with its operations in previous years, and Respondent Employer appears to have recognized this fact when it voluntarily supplied the Union with profit-and-loss statements going back 3 years. What the Union, and more precisely the Union's retained auditor, wanted after examining these statements were certain explanations of what they meant. The statements appeared to be profit-and-loss statements

[8] *Printing Pressmen's Local No. 5* v. *N.L.R.B.*, 538 F.2d 496 (2d Cir. 1976).

[9] *Latimer Brothers*, 242 NLRB 50 (1979).

before taxes. Hence, an examination of income tax returns was relevant as to whether its financial position after taxes dictated wage relief. Respondent's statements showed dramatic increases in such expenditures as travel, entertainment, and memberships and a dramatic decrease in depreciation on machinery, all of which would be reflected in the bottom line of profitability in calendar year 1980. The Union wanted to know why these changes came about since, if unexplained, they could indicate that Respondent's profitability was being impaired not by uncompetitive wages but by accounting changes and expenditures in areas other than wages which might not be justified. With respect to all of the information requested, Volchko testified it was needed because he could not determine from the data provided whether or not Respondent was suffering a bona fide operating loss because he could not first determine whether the figures presented were based on generally accepted accounting principles. In his professional judgment, until such data should become available, there was no way that any one who examined these statements could evaluate a claim that wage relief was needed.[10] In light of this testimony, it is clear that the data requested was at least potentially relevant to the ultimate question raised by the Employer in its request for wage relief. Accordingly, I conclude that, when Respondent failed and refused the Union's repeated requests to provide it with the data requested in the 21 items prepared by Volchko and submitted to the Employer, Respondent Employer violated Section 8(a)(1) and (5) of the Act.[11]

B. *The Refusal of Respondent Employer To Pay the COLAs Required on May 1 and November 1 and the Regular 20-Cent Increase Due on November 1*

There is no question of fact about Respondent Employer's contractual undertaking to pay its lithographers cost-of-living adjustments on May 1, 1980, and November 1, 1980, in the amount of 4 cents for each 1 percent increase in the cost-of-living index for the Cleveland Metropolitan area. Nor is there any factual question that Respondent did not fulfill its contractual obligations to pay its lithographers either of the two cost-of-living adjustments or the 20-cent-per-hour annual increase in basic wage rates due November 1, 1980, and thereafter. The only question is whether such a breach also constitutes a refusal to bargain within the meaning of Section 8(a)(5) of the Act.

An unfair labor practice complaint is not a writ of special assumpsit. The basic purpose of Section 8(a)(5) of the Act is to regulate the conduct of parties engaged in collective bargaining up to the point of written agreement and then leave disputes arising thereunder to the traditional remedies of civil courts. However, where the failure of an employer to fulfill obligations voluntarily undertaken in a collective-bargaining agreement strikes at the statutory rights of the employees' bargaining representative or amounts to a renunciation of the principles of collective bargaining, the Board may provide a remedy within the framework of the Act. *Detroit Cabinet & Door Company, supra; Nassau County Health Facilities Association, Inc.*, 227 NLRB 1680 (1977). Within these general guidelines, the Board has found it to be a violation of Section 8(a)(5) for an employer unilaterally to institute an incentive wage plan which supplements a wage structure established by contract.[12] It is also a violation of the Act to fail to pay prospective or retroactive wage increases required by the terms of an agreement[13] or to refuse to make fringe benefit payments that are required by contract.[14] In light of these precedents, I conclude that the failure of the Employer to pay the two COLA increases and the annual 20-cent increase amounted to a renunciation of the principles of collective bargaining, one of which is that parties to an agreement should abide by its terms, and it is no defense to the Employer that it was financially unable to make such payments. *Phoenix Air Conditioning, Inc.*, 231 NLRB 341 (1977). Accordingly, I conclude that Respondent Employer violated Section 8(a)(1) and (5) in this regard.[15]

C. *Undermining the Union*

As outlined more fully in *General Electric Company*, 150 NLRB 192 (1964), it is an unfair labor practice for an employer to undermine the status of a bargaining agent by conducting a campaign among employees which is designed to bring pressure upon their representative to accede to the employer's demands. It is immaterial that the campaign be conducted by means of written communications aimed directly to employees or by calling a meeting of employees to discuss orally the matters which should be negotiated directly with their representatives. *Limpco Manufacturing Company, Inc.*, 225 NLRB 987 (1976); *Ward Baking Company, Inc.*, 241 NLRB 1191 (1979). On May 6, 1980, Respondent wrote a letter to each of its lithographic employees informing them that the COLA due to be granted on May 1 would not take place. While providing information directly to employees might be permissible, Respondent in this case went beyond mere notification. Hiney's letter went into the details about the negotiations that had been taking place with the Union during the preceding month con-

[10] Volchko was not retained to make a recommendation on this ultimate question but to advise the Union as to Hiney's financial condition so that the former could make such a determination.

[11] Nor is this a situation in which the Company wished to bargain and the Union agreed only to listen. Even in the absence of data, the parties, acting under the auspices of the Akron Labor-Management Committee, actually worked out a tentative agreement which is the subject of the litigation in the consolidated CB case. Cf. *N.L.R.B.* v. *Goodyear Aerospace Corporation*, 497 F.2d 747 (6th Cir. 1974).

[12] *C & S Industries, Inc.*, 158 NLRB 454 (1966).

[13] *Nedco Construction Corporation*, 205 NLRB 150 (1973); *Inland Cities, Inc.*, 241 NLRB 374 (1979); *Oak Cliff-Golman Baking Company*, 207 NLRB 1063 (1973).

[14] *Home Refining Company, Inc.*, 211 NLRB 910 (1974); *Merryweather Optical Company*, 240 NLRB 1213 (1979); *Detroit Cabinet & Door Company, supra.*

[15] Respondent urges that the Board stay its hand in ordering Respondent to pay the interim wage increases required by the contract and leave the parties to the arbitration remedy set forth in the contract, citing the largely defunct doctrine first enunciated by the Board in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and then repudiated in principal part in *General American Transportation Company*, 228 NLRB 102 (1977). The contention is without merit. Even during its brief but celebrated existence, the Board refused to apply the *Collyer* doctrine to a flat refusal by an employer to pay a contractual wage rate because, in such cases, there is simply no dispute over contract language or application for an arbitrator to resolve. *Oak Cliff-Golman Baking Company*, 202 NLRB 614 (1973).

cerning his request for wage relief. He argued his position to the employees as he had done to their bargaining agent, and he urged them to contact the Union to request it to accede to his request. Such a tactic far exceeds the permissible limits of direct communication amounts to a campaign among unit members to exert pressure on their representatives to agree to the employer's request. Such efforts are inconsistent with an employer's obligation to negotiate directly with the Union and constitute bypassing the collective-bargaining representative. Accordingly, the issuance of Hiney's letter on May 6 constitutes a violation of Section 8(a)(1) and (5) of the Act.

On or about July 10, the Employer repeated this tactic. On this occasion it communicated with employees orally at a meeting conducted on company premises instead of using the mail. While there is some evidence that Hiney made a last-minute effort to inform the Union about this meeting, his effort in this regard was at best desultory. Official union spokesmen were able to be present upon a few hours' notice but the meeting took place anyhow. There is no explanation in the record why the meeting could not have been postponed until an official union negotiator could be present.

At this meeting, Hiney's lawyer spoke to the assembled lithographers. He told them the same thing that company spokesmen had previously been saying to the union negotiators but without avail, namely, that business was bad because Hiney's wage rates were not competitive and, if the Company did not get relief from some of the economic provisions of its contract, the plant would probably close. As in the May 6 letter, a request was made to employees to contact the Union for the purpose of getting it to accede to the Hiney's request for relief. This meeting also constitutes illegal bypassing of the bargaining representative and, for the reasons set forth above pertaining to Hiney's May 6 letter, constitutes a repeated violation of Section 8(a)(1) and (5) of the Act.

D. *Respondent Union's Refusal To Execute the Supplemental Agreement*

A union is entitled to condition the execution of an agreement arrived at during collective bargaining upon ratification by its membership, *Houchens Market* v. *N.L.R.B.*, 375 F.2d 208 (6th Cir. 1967), but such a condition precedent must be known to employer's representatives during the bargaining sessions. Indeed, ratification votes as a prerequisite to final and binding agreements are a commonplace feature of labor relations and have been a regular feature of the relations between Hiney and Respondent Union as long as they have maintained a collective-bargaining relationship. Up to and including the current agreement between these parties, every contract entered into by Hiney with Respondent Union was submitted to a vote of all of the members of Respondent Union employed by any commercial printing firm in the Akron area before it was executed by a representative of the Union. Hiney was well aware of this procedure and was long opposed to it. In 1972, he wrote to Lithographers Local 6-L, the predecessor of Graphic Arts Local 246, and suggested that "it would be in the best interest of both the shop and the employees to have the contract that is ultimately negotiated ratified by only the employees of Hiney. We urge your serious consideration of this suggestion." The Union rejected Hiney's request, submitted the 1972 Hiney contract to a vote of all of the Akron membership for ratification, and has continued to follow the same procedure with respect to every contract it has negotiated with Hiney to date, much to Hiney's displeasure.

The contract entered into by the parties on December 18, 1979, which Hiney sought to amend throughout 1980 and 1981, contains another clause bearing upon the authority of the union negotiators to reach a final and binding agreement without subsequent approval. The contract provides in pertinent part:

> This Agreement is subject to the approval of the International President. Such approval does not, however, under any circumstances make the International responsible for the observance of this contract or any breach thereof.

The 1979–81 Agreement also contained the signature of Kenneth J. Brown, International president. The same provisions can be found in other contracts signed by Respondent Union with other employers which were introduced into the record in this case.

The nub of the Union's contention herein is that the February 4, 1981, modification was never submitted to the Akron membership because of its ultimate rejection by Hiney employees, was perforce never ratified by the Akron membership, and thus was never accepted by the necessary formalities which must attend the approval of an agreement with Hiney. Respondent Union also contends that the modification was also not approved by its International president and that such approval is as necessary for a modification of the 1979–81 contract as it was for the document which it purports to amend.

The General Counsel and the Employer lay great emphasis on Bockman's statement in the fall of 1980 to Hiney, a statement never challenged by Bockman, that ratification of any contract relief agreement would be taken among the employees of the affected employer only, since all of the commercial job shops in Akron were not requesting contract relief. It is their contention, based upon Bockman's statement, that when Hiney employees voted 11 to 7 to approve the modification submitted to them on February 4, 1981, a valid agreement came into effect at that time and Respondent Union was obligated by Section 8(d) of the Act to put that agreement into writing and to abide by it.

For as long as Hiney has maintained a contractual relationship with the Respondent Union (or its predecessors), the latter has insisted that every lithographer in every Akron commercial job shop has a direct interest in the wages and benefits being paid to every other lithographer because every job shop is in direct competition with every other one. Contracts were negotiated separately but simultaneously. With rare exception, the wages and benefits paid under every individual contract were identical, even though each contract was separately executed. The device used by Akron lithographers to maintain their wage scale has been to insist that every con-

tract with every printing shop be submitted to the entire Akron membership of Respondent Union, not just to the employees of the individual shop, for ratification before final acceptance. No challenge has been leveled at the legality of this practice and no doubt has been asserted that this was and continues to be the practice in the printing industry in the Akron area.

The mid-term relief demanded by Hiney was the first example of its kind in the history of the Akron printing industry. There was no precedent for Hiney's request and no procedures spelled out in any constitution or bylaw for handling such a request. Bockman testified that, in the face of this unprecedented demand, he "pressed the panic button." The question remains as to whether he had the right topress the panic button on behalf of all Akron lithographers, most of whom were employed by employers other than Hiney. These men had a right to rely upon a longstanding practice of general ratification in order to protect their scale from encroachments by an individual print shop who might seek a special exemption or a special deal having the inevitable effect of eroding their wages and benefits and undermining the job opportunities available under their own contracts.

The Board long ago held that it is for the union, not the employer with whom it is dealing, to construe the meaning of the union's internal regulations relating to ratification. *North Country Motors, Ltd.*, 146 NLRB 671 (1964). It is also a well-settled principle of agency law that the statement of an agent concerning the existence or extent of his authority is not admissible against his principal to prove its existence or extent. *Restatement of Agency*, Sec. 285. The Board has also stated repeatedly that it will not be bound by what it calls the "technicalities of contract law" and will lightly infer ratification of the acts and statements of bargaining agent, even where such acts and statements amount to "bootstrapping." *Sheetmetal Workers Local 65 (Inland Steel Products Company)*, 120 NLRB 1678 (1958); *Operating Engineers Local 13 (California Association of Employees)*, 123 NLRB 922; *Local 100 (Duro Paper Bag Manufacturing Company, Inc.)*, 216 NLRB 1070 (1975), enfd. 532 F.2d 569 (6th Cir. 1976). In this case, there is no dippute that the agreement which Bockman concluded with Hiney on February 4, 1981, was a tentative one and that further approval had to be forthcoming before it was final. There is also no dispute that Hiney knew of this requirement at the time. The question is whether Bockman had the right to violate clearly established past practice and to substitute for that practice a ratification procedure having a substantial and adverse impact on the status of nonvoting members by submitting the modification of the Hiney agreement to Hiney employees alone and concluding an agreement based upon the outcome of that vote. I conclude that he did not and that the prompt action of the executive board in repudiating Bockman's action is strong evidence that he had overstepped his authority. Since the Employer took no action changing its position based upon Bockman's purported agreement, such as making payments in accordance with the supplementary agreement, it is in no position to argue now that an estoppel situation has arisen.

Any question that Bockman could *sua sponte* revise the ratification procedure in midstream and effectuate a valid contractual revision by a voting procedure different from the one which attended the initial agreement is rendered moot by a second prerequisite to final union approval contained in the original contract and in the longstanding practice of the parties. The 1979–81 contract explicitly required that the International president approve the contract before it became valid and so have the other contracts which Respondent Union has concluded and which are in evidence. There is no suggestion that Bockman ever said that he could conclude a substantial modification of an existing agreement without abiding by a requirements set forth in the original contract, and his reported telephone conversation of February 4, 1981, with International President Kenneth J. Brown contained nothing more than Brown's reluctant approval for Bockman to negotiate a wage modification and submit it to a vote. In no way could this conversation, which took place before the February 4 agreement was negotiated, be construed as an approval of a contract modification which was thereafter concluded. A union has the right to condition approval of a contract concluded by a local upon approval by an international union with which the local is affiliated. *Standard Oil Company*, 137 NLRB 690 (1962); *Local 9, Operating Engineers (Fountain and and Gravel Company)*, 210 NLRB 129 (1974). This Union has consistently and repeatedly made such approval a condition of acceptance throughout its bargaining relationship with Hiney. There is no reason to believe that it waived this important requirement at a critical juncture when it was being asked to undo what it had accomplished in the bargaining sessions which led up to the contract which was now being fundamentally revised. For these reasons, I conclude that approval of the modification of the 1979–81 Hiney contract was subject to the same conditions which attended the original bargaining, namely, ratification by Respondent's membership in the Akron area, not just Hiney employees, and approval by the International president. Because these approvals had not been secured, Respondent Union was under no obligation to execute the so-called Supplementary Agreement which the Employer presented to it on or about February 5, 1981. Accordingly, the complaint issued herein against the Respondent Union should be dismissed.

CONCLUSIONS OF LAW

1. Respondent Hiney Printing Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Graphic Arts Union Local No. 246 is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein Graphic Arts Union Local No. 246 has been the exclusive representative for purposes of collective bargaining for the employees of the Respondent in the following described unit:

> All lithographic production employees, excluding letterpress pressmen, linotype operators, mailing department employees, bindery department employees, truckdrivers, office clerical employees, guards,

professional employees, and supervisors as defined in the Act.

4. By failing and refusing to pay its lithographic employees cost-of-living adjustments falling due on May 1, 1980, and November 1, 1980, under the terms of its collective-bargaining agreement with Graphic Arts Union Local No. 246; by failing and refusing to pay its lithographic employees a 20-cent-per-hour annual increase falling due on November 1, 1980, under the terms of the aforesaid contract; by failing and refusing to furnish Graphic Arts Union Local No. 246 certain information requested by that Union relating to the financial operations of the Company; and in bypassing Graphic Arts Union Local No. 246 by conducting a campaign among bargaining unit members aimed at bringing pressure to bear on said Union to force it to accede to the Employer's bargaining requests, the Respondent Employer herein violated Section 8(a)(1) and (5) of the Act.

5. Respondent Union did not commit the unfair labor practices alleged in the complaint in Case 8–CB–4404.

6. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Employer has committed certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take other affirmative actions designed to effectuate the purposes and policies of the Act. Specifically I will recommend that the Respondent Employer be required to give full force and effect to the provisions of the contract relating to COLA and the midterm wage adjustment, that it provide the Union with the 21 separate items of financial information which the Union requested from the Respondent on or about April 22, 1980, and that it cease and desist from bypassing the Union by conducting a campaign among bargaining unit employees designed to apply pressure on the Union to accede to the Employer's bargaining requests. I will also recommend that the Board require the Respondent Employer to pay to its employees the amounts they would have received if the Employer had paid the contractually required COLA and midterm wage increases, with interest thereon at the adjusted prime rate used by the Internal Revenue Service for the computation of tax payments. *Olympic Medical Corporation*, 250 NLRB 146 (1980); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). I will also recommend that the Respondent Employer be required to post the usual notice, advising its employees of their rights and of the results in this case.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER[16]

The Respondent, Hiney Printing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to pay to its employees cost-of-living adjustments, midterm wage increases, or any other wages or benefits required to be paid in accordance with the provisions of its collective-bargaining agreements.

(b) Failing and refusing to furnish to Graphic Arts Union Local No. 246 the 21 separate items of financial data requested by said Union on or about April 22, 1980, or any other information or data which is relevant to the performance by the Union of its responsibility as the bargaining representative for the Respondent's lithographic employees.

(c) Conducting among the Respondent's employees a campaign designed to bring pressure upon Graphic Arts Union Local 246 to accede to its collective-bargaining requests or otherwise bypassing Graphic Arts Union Local No. 246 as the collective-bargaining representative of the Respondent's lithographic employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Furnish the Union the 21 separate items of financial data requested by the Union on or about April 22, 1980.

(b) Pay to Respondent's lithographic employees the sums they would have earned had the Respondent put into effect the cost-of-living adjustments and the midterm wage increase due under the terms of the current collective-bargaining agreement with Graphic Arts Union Local No. 246, with interest, as set forth in the section herein entitled "The Remedy."

(c) Post at its Akron, Ohio, plant copies of the attached notice marked "Appendix."[17] Copies of said notice on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notice is not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint in Case 8–CB–4404 be, and it hereby is, dismissed.

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[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."